

State Supreme Court rules against Lakewood in public-records dispute

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The state Supreme Court said in a ruling issued Thursday that the city of Lakewood didn't adequately explain why it withheld driver's license numbers from a frequent public-records seeker.

The 5-4 opinion determined that agencies must give a brief explanation when they decide to withhold or redact any records requested under the state Public Records Act.

"What they said, which I thought was useful, was if you're going to give an explanation you need to make it adequate enough," said Seattle attorney Michele Earl-Hubbard. "And if you don't get it, then the requester gets their fees and costs paid."

Earl-Hubbard filed legal briefs in the case arguing in favor of better explanation by agencies when withholding personal information. The briefs were filed on behalf of the Allied Daily Newspapers of Washington, the Washington Newspapers Publishers Association and the Washington Coalition for Open Government.

The suit stemmed from a series of public records request made in 2007 by public records activist David Koenig, who has successfully sued Lakewood in the past.

Koenig of Federal Way asked for documents relating to three separate incidents involving police officers. The city ultimately supplied the records but redacted Social Security numbers, driver's license numbers and birth dates of the individuals listed in the reports.

The city referenced the Revised Code of Washington as its justification for withholding the information. Koenig questioned the city's use of the statutes, specifically asking why the driver's license numbers were withheld.

Lakewood did not explain how the law or other statutes it cited applied to withholding the driver's license data, the justices determined.

The court made its decision based on the city's response to Koenig that said its reasons for the redaction should be "self-evident" and further explanation was "unnecessary."

In his legal argument, Lakewood assistant city attorney Matthew Kaser asked the court to rule that driver's license numbers are exempt under the Public Records Act.

Writing for the majority, Justice Steven Gonzalez said the question before the court was not whether the driver's license numbers were appropriately redacted, but whether Lakewood has a duty to explain the redaction. He said the city does have that duty, and that the city didn't give a proper explanation.

The Supreme Court declined to delve into what a lower court called "an unfortunate oversight" in state law regarding the release of personal identifying information. State law is unclear whether driver's license numbers should be protected.

Both courts opined only the Legislature can address the oversight.

Koenig has fought for public records for more than a decade around the Puget Sound area. He became a crusader after documents related to a crime against his daughter were kept from him in the mid-1990s.

He took that case to the Supreme Court, which resulted in the city of Des Moines paying him and his attorney \$83,500. He has also received close to \$50,000 from Buckley and Tukwila for cases involving police officers in those jurisdictions.

In recent years, Koenig has filed a handful of claims against Lakewood.

In 2008, the city was ordered to pay Koenig \$40,000 in legal fees for improperly denying him public records about the arrest of a cop in a prostitution sting.

In the middle of that case, Koenig sought more records, and Lakewood took the unusual step of suing him, saying it had already complied with his requests. Koenig's lawyer called it petty retaliation.

That case is the one that ultimately landed before the Supreme Court in June.

A lower court sided with the city in its lawsuit, but the state Court of Appeals ruled Lakewood should pay attorney fees because its response did not comply with a requirement to briefly explain why certain information was withheld.

The Supreme Court's ruling Thursday upheld the appeals court ruling that Lakewood must reimburse Koenig's legal fees. The amount will be set by a lower court.

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